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7 Attorneys for Defendants  
8 MILEY CYRUS, also sued as MCEO Publishing,  
9 GREGORY HEIN, also sued as Songs By Gregory Hein,  
MICHAEL POLLACK, also sued as What Key Do You  
Want it in Music, MCEO, INC., SONY MUSIC  
ENTERTAINMENT, SONY MUSIC PUBLISHING (US) LLC,  
10 PULSE 2.0, LLC, sued as These Are Pulse Songs, PURE  
TONE MUSIC, LLC, sued as Songs With A Pure Tone,  
11 CONCORD MUSIC PUBLISHING LLC, BLASTRONAUT,  
INC., sued as Droog Publishing, WARNER-TAMERLANE  
PUBLISHING CORP., AMAZON.COM SERVICES LLC,  
APPLE INC., PANDORA MEDIA, LLC, DISNEY PLATFORM  
DISTRIBUTION, INC., TARGET CORP., BARNES  
& NOBLE BOOKSELLERS, INC., TIDAL MUSIC  
LLC, WALMART INC., WAL-MART.COM USA, INC.,  
WIDE EYED GLOBAL, IHEARTMEDIA, INC.,  
LIVE NATION ENTERTAINMENT, INC.,  
XANDRIE SA, and DEEZER S.A.

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION**

20 TEMPO MUSIC INVESTMENTS, LLC, } Case No. 2:24-cv-07910-DDP-BFM  
21 Plaintiff, } ANSWER TO COMPLAINT  
22 v. } DEMAND FOR JURY TRIAL  
23 MILEY CYRUS, an individual; }  
24 GREGORY HEIN, an individual; }  
25 MICHAEL POLLACK, an individual; }  
SONY MUSIC PUBLISHING (US) }  
26 LLC; CONCORD MUSIC }  
PUBLISHING LLC; WARNER- }  
27 TAMERLANE PUBLISHING CORP.; }  
MCEO PUBLISHING; WHAT KEY }  
(continued next page) }

1 DO YOU WANT IT IN MUSIC; }  
2 SONGS WITH A PURE TONE; }  
3 SONGS BY GREGORY HEIN; }  
4 DROOG PUBLISHING; THESE ARE }  
5 PULSE SONGS; WIDE EYED }  
6 GLOBAL; MCEO, INC.; SONY }  
7 MUSIC ENTERTAINMENT; APPLE }  
8 INC.; IHEARTMEDIA, INC.; }  
9 PANDORA MEDIA, LLC; DEEZER }  
10 S.A.; AMAZON.COM SERVICES }  
11 LLC; SOUNDCLOUD GLOBAL }  
12 LIMITED & CO. KG; TIDAL MUSIC }  
13 LLC; XANDRIE SA; LIVE NATION }  
14 ENTERTAINMENT, INC.; TARGET }  
15 CORP.; WAL-MART.COM USA, LLC; }  
16 WALMART INC.; BARNES & }  
17 NOBLE BOOKSELLERS, INC.; }  
18 DISNEY PLATFORM }  
19 DISTRIBUTION, INC.; and DOES 1- }  
20 10, inclusive, }  
21  
22 Defendants. }  
23  
24  
25  
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## ANSWER TO COMPLAINT

Defendant Deezer S.A. (“Defendant”) answers the Complaint of plaintiff Tempo Music Investments, LLC (“Plaintiff”), as follows:

## **“INTRODUCTION”<sup>1</sup>**

1. Answering paragraph 1 of the Complaint, to the extent the allegations contained therein allege conclusions of law, Defendant is not required to plead thereto. To the extent the allegations are deemed allegations of fact, Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein and, on that basis, denies those allegations.

2. Answering paragraph 2 of the Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein and, on that basis, denies those allegations.

3. Answering paragraph 3 of the Complaint, to the extent the allegations contained therein allege conclusions of law, Defendant is not required to plead thereto; to the extent the allegations are deemed allegations of fact, Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein and, on that basis, denies those allegations.

4. Answering paragraph 4 and footnote 1 of the Complaint, to the extent the allegations contained therein allege conclusions of law, Defendant is not required to plead thereto; to the extent the allegations are deemed allegations of fact, Defendant admits that in January 2023, Miley Cyrus, a well-known recording artist and a defendant in this action, released the song titled *Flowers*, denies that *Flowers* copies *When I Was Your Man*, and lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained therein and, on that basis, denies those allegations.

<sup>1</sup> Defendant includes the section headings from the Complaint in this Answer purely for ease of organization; to the extent those headings include any allegations of fact, Defendant denies each and every allegation thereof.

1       5. Answering paragraph 5 of the Complaint, Defendant lacks knowledge or  
2 information sufficient to form a belief as to the truth or falsity of the allegations  
3 contained therein and, on that basis, denies those allegations.

4       6. Answering paragraph 6 of the Complaint, Defendant objects to the extent  
5 that the allegations contained therein require the opinion of an expert and that  
6 purporting to require that Defendant respond at this time is improper and premature  
7 under Federal Rule of Civil Procedure 26; as to any non-expert allegations, Defendant  
8 denies the allegations contained therein.

9       7. Answering paragraph 7 of the Complaint, to the extent the allegations  
10 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
11 to the extent the allegations are deemed allegations of fact, Defendant admits that  
12 Plaintiff purports to bring this action for copyright infringement and claims that all  
13 defendants have engaged in the unauthorized reproduction, distribution, and  
14 exploitation of *When I Was Your Man*, denies that any defendant has infringed a  
15 copyright in *When I Was Your Man*, denies that *Flowers* copies *When I Was Your*  
16 *Man*, and lacks knowledge or information sufficient to form a belief as to the truth or  
17 falsity of the remaining allegations contained therein and, on that basis, denies those  
18 allegations.

## **“JURISDICTION AND VENUE”**

20       8. Answering paragraph 8 of the Complaint, to the extent the allegations  
21 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
22 to the extent the allegations are deemed allegations of fact, Defendant admits that  
23 Plaintiff contends the Court has subject matter jurisdiction pursuant to 28 U.S.C. §  
24 1331 and 28 U.S.C. § 1338(a) insofar as Plaintiff purports to assert a claim under the  
25 Copyright Act, and Defendant denies each and every remaining allegation contained  
26 therein.

27       9.       Answering paragraph 9 of the Complaint, the allegations consist of legal  
28 conclusions to which no response is required. To the extent any response is required,

1 Defendant, without conceding that personal jurisdiction is appropriate as to any other  
2 defendant in this action, does not dispute personal jurisdiction over it in this action.

3 10. Answering paragraph 10 of the Complaint, the allegations consist of legal  
4 conclusions to which no response is required. To the extent any response is required,  
5 Defendant, without conceding that venue is appropriate as to any other defendant in  
6 this action, does not dispute that venue is proper as to Defendants in this action.

7 **“PARTIES”**

8 11. Answering paragraph 11 of the Complaint, to the extent the allegations  
9 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
10 to the extent the allegations are deemed allegations of fact, Defendant lacks  
11 knowledge or information sufficient to form a belief as to the truth or falsity of the  
12 allegations contained therein and, on that basis, denies those allegations.

13 12. Answering paragraph 12 of the Complaint, to the extent the allegations  
14 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
15 to the extent the allegations are deemed allegations of fact, Defendant lacks  
16 knowledge or information sufficient to form a belief as to the truth or falsity of the  
17 allegations contained therein and, on that basis, denies those allegations.

18 13. Answering paragraph 13 of the Complaint, to the extent the allegations  
19 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
20 to the extent the allegations are deemed allegations of fact, Defendant lacks  
21 knowledge or information sufficient to form a belief as to the truth or falsity of the  
22 allegations contained therein and, on that basis, denies those allegations.

23 14. Answering paragraph 14 of the Complaint, to the extent the allegations  
24 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
25 to the extent the allegations are deemed allegations of fact, Defendant lacks  
26 knowledge or information sufficient to form a belief as to the truth or falsity of the  
27 allegations contained therein and, on that basis, denies those allegations.

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1       15. Answering paragraph 15 of the Complaint, to the extent the allegations  
2 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
3 to the extent the allegations are deemed allegations of fact, Defendant lacks  
4 knowledge or information sufficient to form a belief as to the truth or falsity of the  
5 allegations contained therein and, on that basis, denies those allegations.

6       16. Answering paragraph 16 of the Complaint, to the extent the allegations  
7 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
8 to the extent the allegations are deemed allegations of fact, Defendant lacks  
9 knowledge or information sufficient to form a belief as to the truth or falsity of the  
10 allegations contained therein and, on that basis, denies those allegations.

11       17. Answering paragraph 17 of the Complaint, to the extent the allegations  
12 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
13 to the extent the allegations are deemed allegations of fact, Defendant lacks  
14 knowledge or information sufficient to form a belief as to the truth or falsity of the  
15 allegations contained therein and, on that basis, denies those allegations.

16       18. Answering paragraph 18 of the Complaint, to the extent the allegations  
17 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
18 to the extent the allegations are deemed allegations of fact, Defendant lacks  
19 knowledge or information sufficient to form a belief as to the truth or falsity of the  
20 allegations contained therein and, on that basis, denies those allegations.

21       19. Answering paragraph 19 of the Complaint, to the extent the allegations  
22 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
23 to the extent the allegations are deemed allegations of fact, Defendant lacks  
24 knowledge or information sufficient to form a belief as to the truth or falsity of the  
25 allegations contained therein and, on that basis, denies those allegations.

26       20. Answering paragraph 20 of the Complaint, to the extent the allegations  
27 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
28 to the extent the allegations are deemed allegations of fact, Defendant lacks

1 knowledge or information sufficient to form a belief as to the truth or falsity of the  
2 allegations contained therein and, on that basis, denies those allegations.

3       21. Answering paragraph 21 of the Complaint, to the extent the allegations  
4 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
5 to the extent the allegations are deemed allegations of fact, Defendant lacks  
6 knowledge or information sufficient to form a belief as to the truth or falsity of the  
7 allegations contained therein and, on that basis, denies those allegations.

8       22. Answering paragraph 22 of the Complaint, to the extent the allegations  
9 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
10 to the extent the allegations are deemed allegations of fact, Defendant lacks  
11 knowledge or information sufficient to form a belief as to the truth or falsity of the  
12 allegations contained therein and, on that basis, denies those allegations.

13       23. Answering paragraph 23 of the Complaint, to the extent the allegations  
14 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
15 to the extent the allegations are deemed allegations of fact, Defendant lacks  
16 knowledge or information sufficient to form a belief as to the truth or falsity of the  
17 allegations contained therein and, on that basis, denies those allegations.

18       24. Answering paragraph 24 of the Complaint, to the extent the allegations  
19 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
20 to the extent the allegations are deemed allegations of fact, Defendant lacks  
21 knowledge or information sufficient to form a belief as to the truth or falsity of the  
22 allegations contained therein and, on that basis, denies those allegations.

23       25. Answering paragraph 25 of the Complaint, to the extent the allegations  
24 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
25 to the extent the allegations are deemed allegations of fact, Defendant lacks  
26 knowledge or information sufficient to form a belief as to the truth or falsity of the  
27 allegations contained therein and, on that basis, denies those allegations.

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1       26. Answering paragraph 26 of the Complaint, to the extent the allegations  
2 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
3 to the extent the allegations are deemed allegations of fact, Defendant denies it is a  
4 “limited company,” admits it is organized under French law and, through its music  
5 streaming service, has participated in the distribution of *When I Was Your Man* and  
6 *Flowers*, and Defendant lacks knowledge or information sufficient to form a belief as  
7 to the truth or falsity of the remaining allegations contained therein and, on that basis,  
8 denies those remaining allegations.

9       27. Answering paragraph 27 of the Complaint, to the extent the allegations  
10 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
11 to the extent the allegations are deemed allegations of fact, Defendant lacks  
12 knowledge or information sufficient to form a belief as to the truth or falsity of the  
13 allegations contained therein and, on that basis, denies those allegations.

14       28. Answering paragraph 28 of the Complaint, to the extent the allegations  
15 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
16 to the extent the allegations are deemed allegations of fact, Defendant lacks  
17 knowledge or information sufficient to form a belief as to the truth or falsity of the  
18 allegations contained therein and, on that basis, denies those allegations.

19       29. Answering paragraph 29 of the Complaint, to the extent the allegations  
20 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
21 to the extent the allegations are deemed allegations of fact, Defendant lacks  
22 knowledge or information sufficient to form a belief as to the truth or falsity of the  
23 allegations contained therein and, on that basis, denies those allegations.

24       30. Answering paragraph 30 of the Complaint, to the extent the allegations  
25 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
26 to the extent the allegations are deemed allegations of fact, Defendant lacks  
27 knowledge or information sufficient to form a belief as to the truth or falsity of the  
28 allegations contained therein and, on that basis, denies those allegations.

1       31. Answering paragraph 31 of the Complaint, to the extent the allegations  
2 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
3 to the extent the allegations are deemed allegations of fact, Defendant lacks  
4 knowledge or information sufficient to form a belief as to the truth or falsity of the  
5 allegations contained therein and, on that basis, denies those allegations.

6       32. Answering paragraph 32 of the Complaint, to the extent the allegations  
7 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
8 to the extent the allegations are deemed allegations of fact, Defendant lacks  
9 knowledge or information sufficient to form a belief as to the truth or falsity of the  
10 allegations contained therein and, on that basis, denies those allegations.

11       33. Answering paragraph 33 of the Complaint, to the extent the allegations  
12 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
13 to the extent the allegations are deemed allegations of fact, Defendant lacks  
14 knowledge or information sufficient to form a belief as to the truth or falsity of the  
15 allegations contained therein and, on that basis, denies those allegations.

16       34. Answering paragraph 34 of the Complaint, to the extent the allegations  
17 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
18 to the extent the allegations are deemed allegations of fact, Defendant lacks  
19 knowledge or information sufficient to form a belief as to the truth or falsity of the  
20 allegations contained therein and, on that basis, denies those allegations.

21       35. Answering paragraph 35 of the Complaint, to the extent the allegations  
22 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
23 to the extent the allegations are deemed allegations of fact, Defendant lacks  
24 knowledge or information sufficient to form a belief as to the truth or falsity of the  
25 allegations contained therein and, on that basis, denies those allegations.

26       36. Answering paragraph 36 of the Complaint, to the extent the allegations  
27 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
28 to the extent the allegations are deemed allegations of fact, Defendant lacks

1 knowledge or information sufficient to form a belief as to the truth or falsity of the  
2 allegations contained therein and, on that basis, denies those allegations.

3       37. Answering paragraph 37 of the Complaint, to the extent the allegations  
4 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
5 to the extent the allegations are deemed allegations of fact, Defendant lacks  
6 knowledge or information sufficient to form a belief as to the truth or falsity of the  
7 allegations contained therein and, on that basis, denies those allegations.

8       38. Answering paragraph 38 of the Complaint, to the extent the allegations  
9 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
10 to the extent the allegations are deemed allegations of fact, Defendant lacks  
11 knowledge or information sufficient to form a belief as to the truth or falsity of the  
12 allegations contained therein and, on that basis, denies those allegations.

13       39. Answering paragraph 39 of the Complaint, to the extent the allegations  
14 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
15 to the extent the allegations are deemed allegations of fact, Defendant lacks  
16 knowledge or information sufficient to form a belief as to the truth or falsity of the  
17 allegations contained therein and, on that basis, denies those allegations.

18       40. Answering paragraph 40 of the Complaint, to the extent the allegations  
19 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
20 to the extent the allegations are deemed allegations of fact, Defendant lacks  
21 knowledge or information sufficient to form a belief as to the truth or falsity of the  
22 allegations contained therein and, on that basis, denies those allegations.

23       41. Answering paragraph 41 of the Complaint, to the extent the allegations  
24 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
25 to the extent the allegations are deemed allegations of fact, Defendant lacks  
26 knowledge or information sufficient to form a belief as to the truth or falsity of the  
27 allegations contained therein and, on that basis, denies those allegations.

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1       42. Answering paragraph 42 of the Complaint, to the extent the allegations  
2 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
3 to the extent the allegations are deemed allegations of fact, Defendant denies the  
4 allegations contained therein.

## **“FACTUAL BACKGROUND**

## 6 | **I. Plaintiff Acquires a Share of the Copyright in ‘When I Was Your Man’”**

7       43. Answering paragraph 43 of the Complaint, to the extent the allegations  
8 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
9 to the extent the allegations are deemed allegations of fact, Defendant lacks  
10 knowledge and information sufficient to form a belief as to the truth or falsity of the  
11 allegations contained therein and, on that basis, denies those allegations.

12       44. Answering paragraph 44 of the Complaint, Defendant lacks knowledge  
13 and information sufficient to form a belief as to the truth or falsity of the allegations  
14 contained therein and, on that basis, denies those allegations.

15       45. Answering paragraph 45 of the Complaint, to the extent the allegations  
16 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
17 to the extent the allegations are deemed allegations of fact, Defendant lacks  
18 knowledge or information sufficient to form a belief as to the truth or falsity of the  
19 allegations contained therein and, on that basis, denies those allegations.

20    **“II. Defendants Have Access to ‘When I Was Your Man’ Prior to Creating**  
21    **and Exploiting ‘Flowers’”**

22       46. Answering paragraph 46 of the Complaint, to the extent the allegations  
23 contained therein allege conclusions of law, Defendant is not required to plead thereto.  
24 To the extent the allegations in that paragraph are deemed allegations of fact,  
25 Defendant lacks knowledge or information sufficient to form a belief as to the truth  
26 or falsity of the allegations contained therein and, on that basis, denies those  
27 allegations.

28 //

1     **“III. ‘Flowers’ Is Substantially Similar to ‘When I Was Your Man’”**

2         47.     Answering Paragraph 47 of the Complaint, Defendant admits that  
3     *Flowers* was released in or about January 2023, approximately ten years after *When I*  
4     *Was Your Man*, and denies the remaining allegations contained therein.

5         48.     Answering paragraph 48 of the Complaint, to the extent the allegations  
6     contained therein allege conclusions of law, Defendant is not required to plead thereto;  
7     to the extent the allegations are deemed allegations of fact, Defendant denies the  
8     allegations in that paragraph.

9             **“A. Comparison of the Verse of ‘When I Was Your Man’ and the**  
10             **Chorus of ‘Flowers’”**

11         49.     Answering paragraph 49 of the Complaint, to the extent the allegations  
12     contained therein allege conclusions of law, Defendant is not required to plead thereto;  
13     to the extent the allegations are deemed allegations of fact, Defendant objects that the  
14     allegations require the opinion of an expert and purporting to require that Defendant  
15     respond at this time is improper and premature under Federal Rule of Civil Procedure  
16     26, and as to any non-expert allegations, Defendant lacks knowledge or information  
17     sufficient to form a belief as to the truth or falsity of the allegations contained therein  
18     and, on that basis, denies those allegations.

19         50.     Answering paragraph 50 of the Complaint, Defendant objects that the  
20     allegations require the opinion of an expert and purporting to require that Defendant  
21     respond at this time is improper and premature under Federal Rule of Civil Procedure  
22     26, and as to any non-expert allegations, Defendant lacks knowledge or information  
23     sufficient to form a belief as to the truth or falsity of the allegations contained therein  
24     and, on that basis, denies those allegations.

25         51.     Answering paragraph 51 of the Complaint, Defendant objects that the  
26     allegations require the opinion of an expert and purporting to require that Defendant  
27     respond at this time is improper and premature under Federal Rule of Civil Procedure  
28     26, and as to any non-expert allegations, Defendant lacks knowledge or information

1 sufficient to form a belief as to the truth or falsity of the allegations contained therein  
2 and, on that basis, denies those allegations.

3       **“B. Comparison of the Chorus of ‘When I Was Your Man’ and the**  
4       **Chorus of ‘Flowers’”**

5       52. Answering paragraph 52 of the Complaint, Defendant objects that the  
6 allegations require the opinion of an expert and purporting to require that Defendant  
7 respond at this time is improper and premature under Federal Rule of Civil Procedure  
8 26, and as to any non-expert allegations, Defendant lacks knowledge or information  
9 sufficient to form a belief as to the truth or falsity of the allegations contained therein  
10 and, on that basis, denies those allegations.

11       53. Answering paragraph 53 of the Complaint, Defendant objects that the  
12 allegations require the opinion of an expert and purporting to require that Defendant  
13 respond at this time is improper and premature under Federal Rule of Civil Procedure  
14 26, and as to any non-expert allegations, Defendant lacks knowledge or information  
15 sufficient to form a belief as to the truth or falsity of the allegations contained therein  
16 and, on that basis, denies those allegations.

17       54. Answering paragraph 54 of the Complaint, Defendant objects that the  
18 allegations require the opinion of an expert and purporting to require that Defendant  
19 respond at this time is improper and premature under Federal Rule of Civil Procedure  
20 26, and as to any non-expert allegations, Defendant lacks knowledge or information  
21 sufficient to form a belief as to the truth or falsity of the allegations contained therein  
22 and, on that basis, denies those allegations.

23       55. Answering paragraph 55 of the Complaint, Defendant objects that the  
24 allegations require the opinion of an expert and purporting to require that Defendant  
25 respond at this time is improper and premature under Federal Rule of Civil Procedure  
26 26, and as to any non-expert allegations, Defendant lacks knowledge or information  
27 sufficient to form a belief as to the truth or falsity of the allegations contained therein  
28 and, on that basis, denies those allegations.

1       56. Answering paragraph 56 of the Complaint, Defendant denies that a  
2 comparison of the lyrics of the songs “suggests that the musical similarities are no  
3 coincidence”; as to the remaining allegations, Defendant objects that the allegations  
4 require the opinion of an expert and purporting to require that Defendant respond at  
5 this time is improper and premature under Federal Rule of Civil Procedure 26, and as  
6 to any non-expert allegations contained therein, Defendant lacks knowledge or  
7 information sufficient to form a belief as to the truth or falsity of the allegations  
8 contained therein and, on that basis, denies those allegations.

9       57. Answering paragraph 57 of the Complaint, to the extent the allegations  
10 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
11 to the extent the allegations are deemed allegations of fact, Defendant objects that the  
12 allegations require the opinion of an expert and purporting to require that Defendant  
13 respond at this time is improper and premature under Federal Rule of Civil Procedure  
14 26, and as to any non-expert allegations contained therein, Defendant lacks knowledge  
15 or information sufficient to form a belief as to the truth or falsity of the allegations  
16 contained therein and, on that basis, denies those allegations.

17       58. Answering paragraph 58 of the Complaint, Defendant objects that the  
18 allegations in that paragraph require the opinion of an expert and purporting to require  
19 that Defendant respond at this time is improper and premature under Federal Rule of  
20 Civil Procedure 26, and as to any non-expert allegations contained therein, Defendant  
21 lacks knowledge or information sufficient to form a belief as to the truth or falsity of  
22 the allegations contained therein and, on that basis, denies those allegations.

23           **“C. The Closing or Post-Chorus Sections of ‘Flowers’”**

24       59. Answering paragraph 59 of the Complaint, Defendant objects that the  
25 allegations in that paragraph require the opinion of an expert and purporting to require  
26 that Defendant respond at this time is improper and premature under Federal Rule of  
27 Civil Procedure 26, and as to any non-expert allegations contained therein, Defendant  
28           ///

1 lacks knowledge or information sufficient to form a belief as to the truth or falsity of  
2 the allegations contained therein and, on that basis, denies those allegations.

3       60. Answering paragraph 60 of the Complaint, to the extent the allegations  
4 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
5 to the extent the allegations are deemed allegations of fact, Defendant denies the  
6 allegations.

7       **IV. Defendants Willfully and Knowingly Exploit ‘Flowers’ Despite Its**  
8       **Infringement of ‘When I Was Your Man’”**

9       61. Answering paragraph 61 of the Complaint, to the extent the allegations  
10 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
11 to the extent the allegations are deemed allegations of fact, Defendant denies the  
12 allegations.

13       62. Answering paragraph 62 of the Complaint, to the extent the allegations  
14 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
15 Defendant objects to Plaintiff’s “shotgun pleading” of these allegations, making  
16 sweeping, vague, and undifferentiated allegations regarding all defendants,  
17 notwithstanding that each defendant is a separate company with differing roles  
18 relating to *Flowers*; to the extent the allegations are deemed allegations of fact,  
19 Defendant, for itself alone, admits that it has in some fashion been involved in the use  
20 or other exploitation of *Flowers* and in some instances revenues were derived  
21 therefrom, and Defendant lacks knowledge or information sufficient to form a belief  
22 as to the truth or falsity of the remaining allegations contained therein and, on that  
23 basis, denies the allegations.

24       63. Answering paragraph 63 of the Complaint, to the extent the allegations  
25 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
26 to the extent the allegations are deemed allegations of fact, Defendant, for itself alone,  
27 admits that it has in some fashion been involved in the use or other exploitation of  
28 *Flowers*, and Defendant lacks knowledge or information sufficient to form a belief as

1 to the truth or falsity of the remaining allegations contained therein and, on that basis,  
2 denies the allegations.

## **“CLAIMS FOR RELIEF**

## **FIRST CLAIM FOR RELIEF**

**(COPYRIGHT INFRINGEMENT (17 U.S.C. § 101 *et seq.*) AGAINST  
ALL DEFENDANTS)"**

7       64.    Defendant repeats and realleges its responses set forth above in  
8 paragraphs 1 through 63 as if fully set forth herein.

9       65. Answering paragraph 65 of the Complaint, to the extent the allegations  
10 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
11 to the extent the allegations are deemed allegations of fact, Defendant lacks  
12 knowledge or information sufficient to form a belief as to the truth or falsity of the  
13 remaining allegations contained therein and, on that basis, denies the allegations.

14       66. Answering paragraph 66 of the Complaint, to the extent the allegations  
15 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
16 to the extent the allegations are deemed allegations of fact, Defendant lacks  
17 knowledge or information sufficient to form a belief as to the truth or falsity of the  
18 remaining allegations contained therein and, on that basis, denies the allegations.

19       67. Answering paragraph 67 of the Complaint, to the extent the allegations  
20 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
21 to the extent the allegations are deemed allegations of fact, Defendant denies it created  
22 *Flowers*, and lacks knowledge or information ///  
23 sufficient to form a belief as to the truth or falsity of the remaining allegations  
24 contained therein and, on that basis, denies those allegations.

25       68. Answering paragraph 68 of the Complaint, to the extent the allegations  
26 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
27 to the extent the allegations are deemed allegations of fact, Defendant objects that the  
28 allegations require the opinion of an expert and purporting to require that Defendant

1 respond at this time is improper and premature under Federal Rule of Civil Procedure  
2 26; as to any non-expert allegations remaining contained therein, Defendant denies  
3 that *Flowers* copies *When I Was Your Man* and Defendant lacks knowledge or  
4 information sufficient to form a belief as to the truth or falsity of the remaining  
5 allegations contained therein and, on that basis, denies those allegations.

6 69. Answering paragraph 69 of the Complaint, to the extent the allegations  
7 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
8 to the extent the allegations are deemed allegations of fact, Defendant, for itself alone,  
9 admits that it did not seek or receive permission to copy or interpolate any portion of  
10 *When I Was Your Man* into *Flowers*, denies that any such permission was needed; as  
11 to any other defendants, Defendant lacks knowledge or information sufficient to form  
12 a belief as to the truth or falsity of the allegations contained therein and, on that basis,  
13 denies the allegations.

14 70. Answering paragraph 70 of the Complaint, to the extent the allegations  
15 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
16 to the extent the allegations are deemed allegations of fact, Defendant denies the  
17 allegations.

18 71. Answering paragraph 71 of the Complaint, to the extent the allegations  
19 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
20 to the extent the allegations are deemed allegations of fact, Defendant denies the  
21 allegations.

22 72. Answering paragraph 72 of the Complaint, to the extent the allegations  
23 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
24 to the extent the allegations are deemed allegations of fact, Defendant denies the  
25 allegations.

26 73. Answering paragraph 73 of the Complaint, to the extent the allegations  
27 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
28 Defendant objects to Plaintiff's "shotgun pleading" of these allegations, making

1       sweeping, vague, and undifferentiated allegations regarding all defendants,  
2 notwithstanding that each defendant is a separate company with differing roles  
3 relating to *Flowers*; to the extent the allegations are deemed allegations of fact,  
4 Defendant, for itself alone, admits that it has in some fashion been involved in the use  
5 or other exploitation of *Flowers* and in some instances revenues were derived  
6 therefrom, Defendant denies that it induced, caused, or materially contributed to the  
7 production, preparation, licensing, marketing, or promotion, of *Flowers*, and  
8 Defendant lacks knowledge or information sufficient to form a belief as to the truth  
9 or falsity of the remaining allegations contained therein and, on that basis, denies the  
10 allegations.

11       74.      Answering paragraph 74 of the Complaint, to the extent the allegations  
12 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
13 to the extent the allegations are deemed allegations of fact, Defendant denies the  
14 allegations.

15       75.      Answering paragraph 75 of the Complaint, to the extent the allegations  
16 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
17 to the extent the allegations are deemed allegations of fact, Defendant denies the  
18 allegations.

19       76.      Answering paragraph 76 of the Complaint, to the extent the allegations  
20 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
21 to the extent the allegations are deemed allegations of fact, Defendant denies the  
22 allegations.

23       77.      Answering paragraph 77 of the Complaint, to the extent the allegations  
24 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
25 to the extent the allegations are deemed allegations of fact, Defendant denies the  
26 allegations.

27       ///

28       ///

1       78. Answering paragraph 78 of the Complaint, to the extent the allegations  
2 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
3 to the extent the allegations are deemed allegations of fact, Defendant denies the  
4 allegations.

5       79. Answering paragraph 79 of the Complaint, to the extent the allegations  
6 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
7 to the extent the allegations are deemed allegations of fact, Defendant denies the  
8 allegations.

9       80. Answering paragraph 80 of the Complaint, to the extent the allegations  
10 contained therein allege conclusions of law, Defendant is not required to plead thereto;  
11 to the extent the allegations are deemed allegations of fact, Defendant denies the  
12 allegations.

## AFFIRMATIVE DEFENSES

14        81.    Defendant does not presently know all of the facts and circumstances  
15 relating to Plaintiff's claim and reserves the right to amend this Answer, including but  
16 not limited to adding different or additional affirmative defenses. Subject to the  
17 foregoing, and without waiving or excusing Plaintiff's burden of proof, or admitting  
18 that any of the following are affirmative defenses upon which Defendant has any  
19 burden of proof as opposed to denials of matters as to which Plaintiff has the burden  
20 of proof, or that Defendant has any burden of proof at all, Defendant hereby asserts  
21 the following affirmative defenses.

## **FIRST AFFIRMATIVE DEFENSE**

### **(Failure to State a Claim)**

24 82. Plaintiff's Complaint fails to state a claim upon which relief may be  
25 granted.

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## **SECOND AFFIRMATIVE DEFENSE**

### (Lack of Standing)

3 83. Plaintiff lacks standing to sue for infringement, including under § 501(b)  
4 of the Copyright Act of 1976, 17 U.S.C. §§ 101 et. seq.

### **THIRD AFFIRMATIVE DEFENSE**

### **(Co-Owners of Copyright)**

7 84. To the extent that defendants, or any of them, are co-owners of the *When*  
8 *I Was Your Man* copyright, they cannot be liable for infringement of that copyright.

## FOURTH AFFIRMATIVE DEFENSE

### **(Independent Creation)**

11        85.      The allegedly infringing work was created independently of the allegedly  
12      infringed work.

## **FIFTH AFFIRMATIVE DEFENSE**

### **(Lack of Originality or Protectability)**

15 86. The allegedly copied elements or materials lack originality or otherwise  
16 are not protected by copyright.

## SIXTH AFFIRMATIVE DEFENSE

### **(Plaintiff's Lack of Ownership of the Allegedly Copied Material)**

19 87. Plaintiff does not own the allegedly infringed copyright or any other  
20 rights in or to the portions of the claimed works that are allegedly copied.

## SEVENTH AFFIRMATIVE DEFENSE

### (Fair Use)

23 88. Without admitting the alleged use of any copyrighted material allegedly  
24 owned by Plaintiff, which is denied, the conduct of which Plaintiff complains  
25 constitutes fair use.

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## **EIGHTH AFFIRMATIVE DEFENSE**

## **(Failure to Comply with Copyright Act Formalities)**

89. Plaintiff's claims and/or the remedies Plaintiff seeks are barred by the failure to comply with the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, including but not limited to 17 U.S.C. §§ 401 and 408, and each of them.

## **NINTH AFFIRMATIVE DEFENSE**

### (Waiver)

90. Plaintiff's claims and/or the remedies Plaintiff seeks are barred by the doctrine of waiver.

## **TENTH AFFIRMATIVE DEFENSE**

## (License)

91. Without admitting the use of any copyrighted material allegedly owned by Plaintiff, which is denied, the conduct of which Plaintiff complains was impliedly and/or expressly licensed.

## **ELEVENTH AFFIRMATIVE DEFENSE**

### **(Laches)**

92. Plaintiff's claim and/or the remedies Plaintiff seeks are barred by the doctrine of laches.

## **RESERVATION OF RIGHTS**

93. Defendant reserves the right to assert additional affirmative defenses if discovery or Defendant's investigation reveals grounds for the assertion of the additional defenses, including without limitation affirmative defenses that are referenced in Rule 8(c) of the Federal Rules of Civil Procedure or are otherwise available under applicable law.

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## **PRAYER FOR RELIEF**

**WHEREFORE**, defendant Deezer S.A. prays for judgment as follows:

1. That Plaintiff take nothing by way of its Complaint and that the Complaint be dismissed with prejudice;
2. That Defendant be awarded its costs and attorneys' fees; and
3. For such other and further relief as the Court deems just and proper.

Dated: April 9, 2025

/s/ Peter Anderson

Peter Anderson, Esq.

Eric H. Lamm, Esq.

Alexandra P. Cadena, Esq.  
DANIEL WELCH TRUSTEESHIP FUND

DAVIS WRIGHT TREMAINE LLP  
Attorneys for Defendants

Attorneys for Defendants  
EX CYPRUS, also sued as M

Attorneys for Defendants  
MILEY CYRUS, also sued as MCEO  
Publishing, GREGORY HEIN, also sued as  
Songs By Gregory Hein, MICHAEL  
POLLACK, also sued as What Key Do You  
Want it in Music, MCEO, INC., SONY  
MUSIC ENTERTAINMENT, SONY  
MUSIC PUBLISHING (US) LLC, PULSE  
2.0, LLC, sued as These Are Pulse Songs,  
PURE TONE MUSIC, LLC, sued as, Songs  
With A Pure Tone, CONCORD MUSIC  
PUBLISHING LLC, BLASTRONAUT,  
INC., sued as Droog Publishing, WARNER-  
TAMERLANE PUBLISHING CORP.,  
AMAZON.COM SERVICES LLC,  
APPLE INC., PANDORA MEDIA, LLC,  
DISNEY PLATFORM DISTRIBUTION,  
INC., TARGET CORP., BARNES &  
NOBLE BOOKSELLERS, INC., TIDAL  
MUSIC LLC, WALMART INC., WAL-  
MART.COM USA, INC., WIDE EYED  
GLOBAL, IHEARTMEDIA, INC.,  
LIVE NATION ENTERTAINMENT, INC.,  
XANDRIE SA, and DEEZER S.A.

